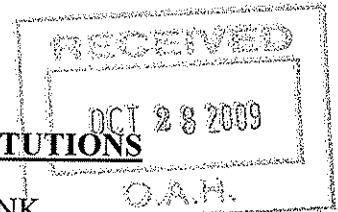


1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**



2 In the Matter of the Mortgage Banker License of:

No. 10F-BD008-BNK

3 **TAYLOR, BEAN & WHITAKER**  
4 **MORTGAGE CORP. AND LEE B. FARKAS,**  
5 **OWNER**  
315 NE 14<sup>th</sup> Street  
Ocala, Florida 34470

**NOTICE OF HEARING**

(Assigned to ALJ Lewis D. Kowal)

6 Petitioners.

7 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,  
8 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of  
9 Administrative Hearings, an independent agency, and is scheduled February 3, 2010, at 8:00 a.m., at  
10 the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602)  
11 542-9826 (the "Hearing").

12 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order  
13 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to  
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
17 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-945; (4) an order to pay  
18 restitution of any fees earned on loans made in violation of A.R.S. §§ 6-941, *et seq.*, pursuant to  
19 A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or any other remedy necessary or proper for the  
20 enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-  
21 131.

22 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of  
23 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied  
24 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to  
25 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the  
26 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office

1 of Administrative Hearings has designated Lewis D. Kowal, at the address and phone number listed  
2 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative  
3 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the  
4 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final  
5 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law  
6 Judge is specifically prohibited from entering.

7       Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
8 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
9 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
10 Administrative Hearings.

11       A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
12 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable  
13 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence  
14 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative  
15 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.  
16 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

17       Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
18 made by a court reporter or by electronic means. Any party that requests a transcript of the  
19 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

20       Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
21 Attorney General Erin O. Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona  
22 85007.

### 23                                   **NOTICE OF APPLICABLE RULES**

24       On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
25 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
26 forth the rules of practice and procedure applicable in contested cases and appealable agency actions

1 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules  
2 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through  
3 R2-19-122. A copy of these rules is enclosed.

4 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20)**  
5 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position  
6 or defense and shall specifically admit or deny each of the assertions contained in this Notice of  
7 Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or  
8 information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which  
9 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners  
10 intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioners  
11 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised  
12 in the answer is deemed waived.

13 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**  
14 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as  
15 true and admitted and the Superintendent may take whatever action is appropriate, including  
16 suspension, revocation, denial of Petitioners' license or affirming an order to Cease and Desist and  
17 imposition of a civil penalty or restitution to any injured party.

18 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial  
19 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
20 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
21 Arizona 85007 and to Assistant Attorney General Erin O. Gallagher, Consumer Protection &  
22 Advocacy Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

23 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
24 **alternative format or assistance with physical accessibility.** Requests for accommodations must  
25 be made as early as possible to allow time to arrange the accommodations. If accommodations are  
26 required, call the Office of Administrative Hearings at (602) 542-9826.

1 COMPLAINT

2 1. Petitioner Taylor, Bean & Whitaker Mortgage Corp. ("TB&W") is a Florida corporation  
3 authorized to transact business in Arizona as a mortgage banker, license number BK 0903838,  
4 within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of TB&W's business is that of making,  
5 negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by  
6 Arizona real property within the meaning of A.R.S. § 6-941(5).

7 2. Petitioner Lee B. Farkas ("Mr. Farkas") is the one hundred percent (100%) owner of TB&W  
8 and is authorized to transact business in Arizona as a mortgage banker within the meaning of A.R.S.  
9 §6-941(5), as outlined within A.R.S. § 6-943(F).

10 3. TB&W and Mr. Farkas are not exempt from licensure as mortgage bankers within the  
11 meaning of A.R.S. §§ 6-942 and 6-941(5).

12 4. On August 4, 2009, the Department of Housing and Urban Development issued a news  
13 release ("News Release") that the Federal Housing Administration ("FHA") had suspended TB&W  
14 from originating and underwriting loans insured by the FHA.

15 5. The News Release further stated that the Government National Mortgage Association  
16 ("Ginnie Mae") defaulted and terminated TB&W as an issuer of its Mortgage-Backed Securities  
17 program and ended TB&W's ability to continue servicing Ginnie Mae securities.

18 6. Pursuant to the News Release, the FHA and Ginnie Mae took their respective actions because  
19 TB&W "failed to submit a required annual financial report and misrepresented that there were no  
20 unresolved issues with its independent auditor" despite "irregular transactions that raised concerns of  
21 fraud." The FHA also based its action on the fact that TB&W failed to disclose and concealed that it  
22 was the subject of two (2) examinations involving its business practices.

23 7. In a letter dated August 4, 2009, the Federal Home Loan Mortgage Corporation ("Freddie  
24 Mac") informed TB&W that it was immediately terminating TB&W's eligibility "to sell mortgage  
25 loans to and service mortgage loans for" Freddie Mac.

26 8. On August 5, 2009, Petitioners issued a press release stating that due to the suspension and

1 termination by the FHA, Ginnie Mae and Freddie Mac, they would immediately be ceasing the  
2 origination of mortgage loans, and had become unable to close or fund any mortgage loans.

3 9. On August 6, 2009, during a telephone call, Petitioners' general counsel represented that  
4 Petitioners are unable to fund any loans in accordance with agreements they have entered into with  
5 Arizona consumers.

6 10. Also on August 6, 2009, Petitioners provided to the Department a list of loans relating to  
7 Arizona properties that had been approved, but not yet funded.

8 11. On August 6, 2009, the Deputy Secretary for Nondepository Financial Institutions and  
9 Consumer Services in Pennsylvania sent two (2) e-mails to TB&W's general counsel, requesting  
10 information on behalf of all state regulators and seeking responses to some of those requests by close  
11 of business August 6, 2009 or August 7, 2009. To date, Petitioners are slowly updating information  
12 provided to the state regulators.

13 12. On August 11, 2009, Petitioners' counsel confirmed that all of Petitioners' funding lines had  
14 been frozen or terminated, and Petitioners are without means to fund any closed loans.

15 13. Several state agencies, including Pennsylvania, New Jersey, Washington, Florida, and  
16 Maryland have entered adverse administrative orders against Petitioner TB&W, based on the above  
17 facts, as well as violations of those states' laws involving deceptive acts or misrepresentation  
18 regarding TB&W's ability to fund closed mortgage loans and disburse monies as agreed.

19 14. As of August 12, 2009, TB&W's website homepage did not alert consumers to the fact that  
20 TB&W has ceased loan origination activity, although current borrowers with TB&W were able to  
21 obtain certain information with their log-in capacity.

22 15. Based upon the above findings, the Department issued and served upon Petitioners an Order  
23 to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Cease and  
24 Desist Order") on August 20, 2009.

25 16. On September 16, 2009, the Department received Petitioners' Request For Hearing to appeal  
26 the Cease and Desist Order.

LAW

1  
2 1. Pursuant to A.R.S. §§ 6-941, *et seq.*, the Superintendent has the authority and duty to  
3 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,  
4 rules, and regulations relating to mortgage bankers.

5 2. By the conduct set forth in the Complaint, Taylor, Bean & Whitaker Mortgage Corp. and Mr.  
6 Farkas violated A.R.S. § 6-947(M), by failing to disburse monies in accordance with their  
7 agreements with consumers and failing to fund closed mortgage loans.

8 3. A number of other states have entered orders against TB&W for deceitful actions and  
9 misrepresentations, the facts of which indicate it may be contrary to the interest of the public to  
10 permit Petitioners' continued licensure, which is grounds for the suspension or revocation of  
11 Petitioners' mortgage banker license pursuant to A.R.S. § 6-945(A)(6).

12 4. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant  
13 to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the  
14 appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent,  
15 to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the  
16 imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation  
17 of Petitioners' license pursuant to A.R.S. § 6-945; (4) an order to pay restitution of any fees earned  
18 on loans made in violation of A.R.S. §§ 6-941, *et seq.*, pursuant to A.R.S. §§ 6-131(A)(3) and 6-137;  
19 and (5) an order or any other remedy necessary or proper for the enforcement of statutes and rules  
20 regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-131.

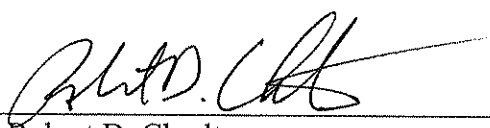
21 5. Pursuant to A.R.S. § 6-132, Petitioners' violations of the aforementioned statutes are grounds  
22 for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.

23 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the  
24 above-described violations, the Superintendent may affirm the August 20, 2009, Cease and Desist  
25 Order pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132; suspend  
26 or revoke Petitioners' license pursuant to A.R.S. § 6-945; order the restitution of any fees earned on

1 loans made in violation of A.R.S. §§ 6-941, *et seq.*, pursuant to A.R.S. §§ 6-131(A)(3) and 6-137;  
2 and order any other remedy necessary or proper for the enforcement of statutes and rules regulating  
3 mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-131.

4 DATED this 28<sup>th</sup> day of October, 2009.

5 Thomas L. Wood  
6 Acting Superintendent of Financial Institutions

7  
8 By   
9 Robert D. Charlton  
Assistant Superintendent of Financial Institutions

10  
11 ORIGINAL of the foregoing filed this 28<sup>th</sup>  
12 day of October, 2009, in the office of:

13 Thomas L. Wood  
14 Acting Superintendent of Financial Institutions  
15 Arizona Department of Financial Institutions  
16 ATTN: Susan Longo  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

17 COPY mailed same date to:

18 Lewis D. Kowal, Administrative Law Judge  
19 Office of the Administrative Hearings  
1400 West Washington, Suite 101  
20 Phoenix, AZ 85007

21 Erin O. Gallagher, Assistant Attorney General  
22 Office of the Attorney General  
1275 West Washington  
23 Phoenix, AZ 85007

24 Robert D. Charlton, Assistant Superintendent  
25 Judith Moss, Senior Examiner  
Arizona Department of Financial Institutions  
26 2910 N. 44th Street, Suite 310  
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2 Troutman Sanders LLP  
3 1001 Haxall Point  
4 P.O. Box 1122 (23218-1122)  
5 Richmond, VA 23219  
6 Attorneys for Petitioners

7 AND COPY MAILED SAME DATE by  
8 Certified Mail, Return Receipt Requested, to:

9 Ashley L. Taylor, Jr., Esq.  
10 Troutman Sanders LLP  
11 1001 Haxall Point  
12 P.O. Box 1122 (23218-1122)  
13 Richmond, VA 23219  
14 Attorneys for Petitioners

15 By:   
16 #565033